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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

METCALF SHAKE COMPANY,)	
)	
Appellant,)	PCHB No. 90-201
)	
v.)	
)	
OLYMPIC AIR POLLUTION CONTROL)	FINAL FINDINGS OF FACT,
AUTHORITY,)	CONCLUSIONS OF LAW AND ORDER
)	
Respondent.)	
<hr/>		

This appeal of a civil penalty of \$50 for an alleged violation of opacity limits came on for hearing before the Pollution Control Hearings Board Tuesday, April 9, 1991, at its Lacey office. Member Harold S. Zimmerman presided. Member Annette S. McGee reviewed the record.

Appellant Metcalf Shake was represented by its owner, Stanley B. Metcalf. Fred D. Gentry, Attorney at Law, represented Olympia Air Pollution Control Authority (OAPCA).

The proceedings were recorded by Lisa Alger of Gene Barker and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was heard. From the testimony, evidence and contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Greg Connor, inspector with the Olympic Air Pollution Control
4 Authority, on June 19, 1990, observed a plume of smoke emanating from
5 a burner at the rear of the Metcalf Shake Mill at Amanda Park, near
6 Aberdeen, in Grays Harbor.

7 II

8 In his visual evaluation of six minutes, Inspector Connor
9 estimated the opacity of the plume to range from 45% to 75% taken
10 between 3:20 p.m. and 3:26 p.m. He took 24 readings and all of them
11 exceeded 20% opacity. The plume was grey in color and appeared to be
12 dry. We find that opacity is the percent of background blocked out by
13 the plume.

14 III

15 At 3:25 p.m., Jim Werner, monitoring technical inspector for
16 OAPCA, accompanying Inspector Connor, took a polaroid picture of the
17 plume against the background of the forests behind the Metcalf Shake
18 Mill. The picture was taken across the highway from the mill because
19 of potential danger in crossing the road at that location. Connor and
20 Werner were driving south on highway 101 as they passed the Metcalf
21 Mill.

22 IV

23 There are seven mills within about 300 feet of the Metcalf Shake
24 Mill. Connor and Werner were returning from inspections of other
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1 sites in the district, and noted the plume at the Metcalf Mill. It
2 was not singled out. The inspectors did not recall seeing any of the
3 other mills emitting a plume of smoke.

4 V

5 Stanley Benjamin Metcalf, owner of the Metcalf Shake Mill, has
6 installed approximately \$22,000 in equipment, such as blowers in the
7 burner, to attempt to comply with air pollution standards.

8 VI

9 The rainfall in the vicinity of the mill has measured up to 170
10 inches per year, and when the burners are on they can develop
11 considerable steam, particularly if the blowers are shut off. When
12 fully functioning, the mill has had up to 33 employees, and has
13 operated eight logging trucks.

14 VII

15 Appellant's sole defense was that a combination of economic
16 factors, such as the old growth timber-spotted owl controversy,
17 housing starts, marketing conditions, and increasing costs of
18 operating in today's regulatory climate have forced shutdown of many
19 mills, and had greatly reduced activity at the Metcalf Shake Mill, and
20 a planned incineration program with one of the large woods products
21 companies was cancelled because of technical difficulties.

22 VIII

23 The Notice of Civil Penalty Assessment of \$50 for alleged
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1 violation of Section 9.03, of OAPCA's Regulation 1 was delivered
2 September 27, 1990, and was appealed to the Pollution Control Hearings
3 Board, October 16, 1990, and became PCHB No. 90-201, now before us.
4 The fine of \$50 is within the guidelines established by OAPCA in 1985.

5 IX

6 Respondent Olympic Air Pollution Control Authority (OAPCA) is a
7 municipal corporation with responsibility for carrying out a program
8 of air pollution prevention and control under the Washington Clean Air
9 Act. Chapter 70.94 RCW. Pursuant to RCW 43.21B.260, OAPCA has filed
10 with the Board a copy of its Regulation 1, and amendments thereto. We
11 take judicial notice of the Regulation. Section 9.03 of OAPCA's
12 Regulation 1 governs opacity of emissions.

13 X

14 Any Conclusion of Law deemed to be a Finding of Fact is hereby
15 adopted as such. From these Findings of Fact, the Board makes these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over the issues and the parties.

19 II

20 Under Regulation 1, Article 9, the pertinent part reads:

21 SECTION 9.03 VISUAL EMISSIONS -

22 (a) *In equipment or facilities, including boilers*
23 *using hogged fuel, regardless of their date of*
24 *installation, no person shall cause or allow the*
25 *emission to the outdoor atmosphere, for more than three*
26 *(3) minutes in any one hour, of a gas stream containing*

1 air contaminants which are darker in shade than that
2 designated as No. 1 (20% density) on the Ringelmann
3 Smoke Chart, as published by the United States Bureau
4 of Mines, or such opacity as to obscure an observer's
5 view to a degree greater than smoke shade No. 1,
6 described above.

7 WAC 173-400-040(1) is to substantially the same effect, but
8 allows the following exception to negate liability:

9 (b) When the owner or operator of a source supplies
10 valid data to show that the presence of uncombined
11 water is the only reason for the opacity to exceed
12 twenty percent. (Emphasis added.)

13 The State statute supporting WAC 173-400-040, and Regulation 1
14 present a strict liability regime. Compliance at all times is
15 required.

16 We conclude that Metcalf Shake violated Regulation 1, Section
17 9.03(a), and WAC 173-400-040 on June 19, 1990. In so concluding, we
18 conclude that appellant has not proven the WAC 173-400-040(1)(b)
19 exception.

20 III

21 The reasonableness of a civil penalty is based upon several
22 factors, including the extent and duration of the violation. The goal
23 of civil penalties is to promote future compliance. Industrial
24 Maintenance and Construction, Inc. v. PSAPCA, PCHB No. 87-179 (October
25 13, 1988). The \$400 maximum penalty was possible under the law. Here
26 only \$50 was assessed. We find the \$50 penalty to be reasonable.

ORDER

OAPCA's Notice and Order of Civil Penalty No. 1302-87 in the amount of \$50 is AFFIRMED.

DONE this 26th day of April, 1991.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


ANNETTE S. MCGEE, Member

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